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CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 95 10911 aj
	)	Chapter 7
GERALD ARMSTRONG,	)	
	)	
Debtor.	)	
	)	
CHURCH OF SCIENTOLOGY INTERNATIONAL,	)	Adv. Pro. No. 95 1164
a California non-profit religious	)	
corporation,	)	Date:
	)	Time:
Plaintiff,	)	Courtroom of the
	)	Honorable Alan Jaroslovsky
v.	)	
	)	Trial Date: Feb. 13, 1996
GERALD ARMSTRONG,	)	
	)	
Defendant.	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE  
AN AMENDED ADVERSARY COMPLAINT AND FOR A CONTINUANCE  
OF THE TRIAL DATE (FRCP 15(a), FRBP 7015 and FRBP 9014)

I. INTRODUCTION

Plaintiff Church of Scientology International ("Plaintiff")  
filed this motion for leave to amend its adversary complaint



1 pursuant to Federal Rule of Civil Procedure 15(a) and Federal Rule  
2 of Bankruptcy Procedure 7015. Plaintiff also seeks a continuance of  
3 the trial date pursuant to Federal Rule of Bankruptcy Procedure  
4 9014.

## 5 II. PRIOR PLEADINGS

6 On April 27, 1995, Plaintiff filed a motion for relief from the  
7 automatic stay pursuant to 11 U.S.C. §362(d)(1). On May 25, 1995,  
8 this Court issued a Memorandum of Decision wherein it granted  
9 Plaintiff's motion for relief from the automatic stay to pursue  
10 Plaintiff's state court action. This state court action was in  
11 Marin Superior Court Action entitled Church of Scientology  
12 International v. Gerald Armstrong, et al., Marin County Superior  
13 Court Case No. 157680 (the "Marin Action"). Plaintiff sought to  
14 liquidate its damages for breach of the settlement agreement, to  
15 enforce a preliminary injunction issued by the state court, and to  
16 obtain a permanent injunction which was broader than the preliminary  
17 injunction previously issued by the court in the Marin Action. In  
18 its Memorandum of Decision, this Court stated:

19 "The request to pursue the action as to injunctive relief  
20 and damages raises very serious legal issues not  
21 appropriate for determination in the context of a relief  
22 from stay proceeding. These issues include whether an  
23 injunction issued to enforce a contract remains  
enforceable after the debtor's contractual obligations  
have been discharged, and whether any damages resulting  
from the action are dischargeable. These issues must be  
determined by adversary proceeding pursuant to FRBP 7001.

24 For purposes of this Motion, it is enough for the court to  
25 note that the injunction may survive the bankruptcy  
26 discharge, and that any damages may be nondischargeable.  
27 Because of these possibilities, the court deems it  
28 appropriate for the matter to proceed in state court so  
long as no enforcement of any judgment is attempted  
without further leave of this court. To this extent, the  
motion will be granted."



1 As a result, Plaintiff proceeded with its action in the Marin  
2 Action. On July 12, 1995, Plaintiff also filed an adversary  
3 complaint to determine the dischargeability of certain debts and  
4 also to object to the debtor's discharge.

5 In the Marin Action, on December 1, 1995, Judge Gary Thomas of  
6 the Marin Superior Court issued a tentative ruling in connection  
7 with Plaintiff's Motion for Summary Adjudication of the First Cause  
8 of Action of Defendant's First Amended Complaint, Severance,  
9 Dismissal of Unadjudicated Claims, and Entry of Final Judgment.  
10 Judge Thomas ordered in part:

11 "The Clerk of the Court is directed to ENTER FINAL  
12 JUDGMENT in favor of the Plaintiff in accordance with the  
13 orders of summary adjudication and permanent injunction  
14 attached hereto as Exhibits A, B, and C;

15 Plaintiff, Church of Scientology International, is  
16 ADJUDICATED the prevailing party in this action, pursuant  
17 to Civil Code Section 1717, and is awarded its attorney's  
18 fees and costs pursuant to that section and the contract  
19 between the parties."

20 A true and correct copy of the proposed order memorializing this  
21 tentative ruling is attached to the Declaration of Andrew H. Wilson  
22 filed herewith as Exhibit A.

23 Plaintiff anticipated receiving this signed order in the Marin  
24 Action, and then filing a motion in this Court to amend the  
25 adversary complaint and continue the currently scheduled trial date  
26 herein. Plaintiff has not yet received a signed copy of the final  
27 judgment and has resubmitted the proposed order to Judge Thomas.  
28 Plaintiff anticipates receiving a signed copy of the order prior to  
the time of the hearing of the Motion to Amend the Adversary  
Complaint and Continue the Trial in this matter.

/ / /



1 In order to address all of the issues between these parties,  
2 including specifically the claims stemming from Defendant's breach  
3 of contract, Plaintiff seeks leave to file the first amended  
4 adversary complaint which is attached to the Declaration of Andrew  
5 H. Wilson as Exhibit B. That proposed first amended adversary  
6 complaint sets forth one additional cause of action based on the  
7 final judgment as it was ordered by the Marin Superior Court. This  
8 cause of action seeks an adjudication of the issue of the  
9 enforceability of the permanent injunction and the dischargeability  
10 of the damages resulting from the Marin Action. Furthermore,  
11 Plaintiff proposes to delete the third and fourth claim for relief  
12 in the existing adversary complaint.

### 13 III. LEGAL ARGUMENT

14 Federal Rule of Civil Procedure 15(a) provides in pertinent  
15 part:

16 "[A] party may amend the party's pleading only after leave  
17 of court or by written consent of the adverse party; and  
leave shall be freely given when justice so requires."

18 In Foman v. Davis, 371 U.S. 178, 182 (1962), the Supreme Court held  
19 that the role of pleadings is limited, and leave to amend pleadings  
20 is freely given unless the opposing party makes a showing of  
21 prejudice.

22 In this case, Defendant cannot show any prejudice whatsoever.  
23 Defendant was aware that, if Plaintiff prevailed on these issues in  
24 the Marin Court Action, Plaintiff would seek to have these issues  
25 adjudicated by an adversary proceeding in this Bankruptcy Court.

26 The Court must evaluate whether this request for leave to amend  
27 would unduly delay the proceedings or result in undue prejudice. In  
28 re Jeffrey Bigelow Design Group, Inc., 956 F.2d 479 (4th Cir. 1993).



1 In this case, no undue prejudice would result because Plaintiff  
2 seeks to have a determination of all claims between the parties  
3 adjudicated in one case, rather than two separate trials which will  
4 be time consuming and expensive. Further, the matter would not be  
5 unduly delayed as Plaintiff is seeking a very brief sixty (60) day  
6 continuance of the trial of this case.

7 The policy that leave to amend shall be freely given when  
8 justice so requires is liberally applied. Morongo Band of Mission  
9 Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1989). Here, the  
10 interests of justice would be served in a most efficient and  
11 economic manner if the Court grants Plaintiff's Motion.

12 The Ninth Circuit in Moore v. Kaport Package Express, Inc., 885  
13 F.2d, 531, 538 (9th Cir. 1989) explained that courts have identified  
14 a number of factors that may justify denial of leave to amend,  
15 including: undue delay, bad faith, futility of amendment, prejudice  
16 to the opposing party and repeated failure to cure deficiencies by  
17 previous amendment.

18 Plaintiff seeks leave to amend to promote judicial economy in  
19 having the same circumstances and related issues between the same  
20 parties tried together. Further, allowing leave to file such an  
21 amended complaint will not create any prejudice to the opposing  
22 party. If this Court denies Plaintiff's request, Plaintiff will  
23 file a separate action based solely on the judgment in the Marin  
24 Action which will require further Court resources and delay a  
25 complete adjudication of all issues between these parties.  
26 Plaintiff has not sought leave to amend this complaint in bad faith  
27 and does not attempt to cure a deficiency or failure of a previous  
28 pleading.



1 Here, there has been no undue delay since Plaintiff has only  
2 recently received its final judgment in the Marin Action, and has  
3 not yet received the written order. Plaintiff's request for leave  
4 to amend is not in bad faith nor can this motion be seen as a  
5 dilatory move since Plaintiff seeks to receive only a sixty (60) day  
6 continuance of the trial in this matter.

7 The proposed amended complaint is based precisely on the issue  
8 this Court identified in its Memorandum of Decision on May 25, 1995  
9 and is necessary for a complete adjudication of the claims between  
10 the parties to this case. Thus, Defendant can claim no prejudice  
11 from an order allowing the filing of this first amended complaint  
12 and brief continuance of the trial date as it will conserve  
13 resources and promote judicial economy.

14 Plaintiff also seeks leave to dismiss the third and fourth  
15 claims for relief in the existing adversary complaint. Plaintiff's  
16 proposed amended adversary complaint will therefore allow Plaintiff  
17 to proceed to trial with a more concise and complete complaint  
18 against this Defendant.

19 Plaintiff is aware this Court is reluctant to grant a  
20 continuance of the trial. Plaintiff believes its Motion is based on  
21 compelling reasons which will ultimately conserve judicial resources  
22 and promote judicial economy in having all issues between these  
23 parties heard in the same trial.

#### 24 IV. CONCLUSION

25 For the foregoing reasons, it is respectfully submitted that in  
26 view of the policy favoring amendment, Plaintiff should be given  
27 leave to file its proposed first amended adversary complaint and a

28 / / /

1 continuance of the trial date of sixty (60) days be granted.

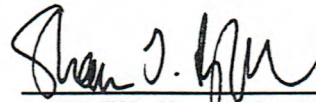
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3 Dated: January 24, 1996

WILSON, RYAN & CAMPILONGO

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ANDREW H. WILSON  
SHAUNA T. RAJKOWSKI

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PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

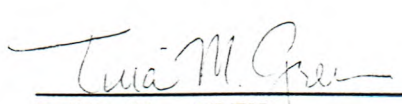
I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

I am readily familiar with Wilson, Ryan & Campilongo's practice for collection and processing of correspondence for hand delivery.

On January 24, 1996, I served the attached PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND FOR A CONTINUANCE OF THE TRIAL DATE and DECLARATION OF ANDREW H. WILSON IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT AND FOR A CONTINUANCE OF TRIAL DATE on the following in said cause, by placing for deposit with Lightening Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Gerald Armstrong  
715 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

I declare under the penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on January 24, 1996 at San Francisco, California.

  
TINA M. GREN

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